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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,178	08/05/2003	Douglas Barton	5659-3	7116

7590 09/23/2005

Woodard, Emhardt, Moriarty, McNett & Henry LLP  
Suite 3700  
111 Monument Circle  
Indianapolis, IN 46204

EXAMINER
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ART UNIT	PAPER NUMBER
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3637

DATE MAILED: 09/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/634,178

Applicant(s)

BARTON, DOUGLAS

Examiner

Phi D. A

Art Unit

3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

*Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-12, 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Stephens (5314261).

Stephens shows an energy absorbing barrier system comprising a first impact panel (12, figure 1 from bottom) partially overlapping a second impact panel (the next panel upward figure 1), a first and second crushable member (14) adapted to be positioned between the first and second impact panels and the barrier (w), the first impact panel is attached to the barrier, the crushable members are adapted to be at least partially crushed between the impact panels and the barrier when the impact panels are impacted sufficiently to deflect the panels against the crushable members, the first and second panels are attached to the barrier, the panels are adapted to be impacted by a motor vehicle, the barrier comprising a guard rail, the barrier comprising a race track wall,

Per claims 17-19, Stephens shows all the claimed structures and the claimed method steps of absorbing impact energy.

3. Claims 1-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Moore.

Moore shows an energy absorbing barrier system comprising a first impact panel (22C, figure 2) partially overlapping a second impact panel (22D), a first and second crushable member (24) adapted to be positioned between the first and second impact panels and the barrier (20), the first impact panel is attached to the barrier, the crushable members are adapted to be at least partially crushed between the impact panels and the barrier when the impact panels are impacted sufficiently to deflect the panels against the crushable members, the first and second panels are attached to the barrier, the panels are adapted to be impacted by a motor vehicle, the barrier comprising a guard rail, the barrier comprising a race track wall, the impact panel comprising a first portion defining a barrier adjacent surface(34) and a first impact surface 9figure 6, bottom) opposite the barrier adjacent surface, the first portion extending longitudinally from a first proximal region to a first distal region, the first distal region attached with a second proximal region of a second portion, the second portion defining a first non-barrier adjacent surface and a second impact surface opposite the first non-barrier adjacent surface, the second portion extending longitudinally from the second proximal region to a second distal region and away from and non-parallel to the barrier adjacent surface, the second distal region attached with a third proximal region of a third portion, the third portion defining a second non-barrier adjacent surface, the third portion extending longitudinally from the third proximal region to a third distal region and substantially parallel to the barrier adjacent surface, the first plate defining one or more fastener holes (35) for fastening the impact panel to the barrier, a pliant fastening system including pliable material being placed between the impact panel and the barrier, a fastener (glue) adapted to fasten the pliable material between the impact panel and the barrier, the impact panel is formed at least partially from steel.

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Per claims 17-19, Moore shows all the claimed structures and the claimed method steps of absorbing impact energy.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art shows different impact dampening device.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 571-272-6864. The examiner can normally be reached on Monday-Tuesday, Thursday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Phi Dieu Tran A

9/19/05